

Remarks

The applicants hereby make the following further Remarks to help ensure the record is as clear as possible. For example, as noted in the previous Supplemental Response of July 3, 2009, the CAFC in the case of *Springs Window Fashions v. Novo Industries* (323 F.3d 989) essentially stated that an applicant is in the best position to clarify the record and, if necessary, to amend the record to correct an attorney error.

Application 09/947,768 (filed 5 SEPT 2001) is a priority application for the present application. A section of application 09/947,768 from p. 66 line 31 to p. 67 line 33 discusses “equivalents.” The applicants hereby make the following remarks about this section. In general, recited techniques in this section are “equivalents” of other techniques (including one or more described techniques) for genotyping or for obtaining sample allele frequency data in the sense that generally each recited technique is a technique for genotyping or for obtaining sample allele frequency data. However, each recited technique in this section is not necessarily “an equivalent” under 35 USC 112, 6th paragraph (e.g., “means plus function” or “step plus function”). And similarly, however, each recited technique in this section is not necessarily “an equivalent” under the judicial “Doctrine of Equivalents.”

For example, as noted by one Court (Johnson v. Root, 13 F. Cas. 823, 828, (C.C.D. Mass. 1858) (No. 7,411), cited in Donner (4th edition) Patent Prosecution vol. 1 p. 272, footnote 490, in a section entitled “Interpreting Claims Under Doctrine of Equivalents”), there may be different meanings for the term “equivalent”: *“The term ‘equivalent’ gentlemen, has two meanings....there may be equivalents as producing the same results, each of which is an independent matter of invention, and in that sense they are not mechanical equivalents.”*

Conclusion

In summary then, the applicants have made the present further Remarks to help ensure the record is as clear as possible.

Respectfully submitted,

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